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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/802,463

03/17/2004

Robert A. Walker

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11/17/2006

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EXAMINER

COCKS, JOSIAH C

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,463

Applicant(s)

WALKER ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-28 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/25/2006 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-3, 6-9, 11-17, and 20-28** rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,126,881 to Blotsky ("Blotsky").

Blotsky disclosures in the specification and Figures 1-5 an invention in the same field of endeavor and as described in applicant's claims 1-3, 6-9, 11-17, and 20-28. In particular, Blotsky shows a barbecue stove that is considered a furnace as recited that includes a combustion chamber (interior of 11), and a burn pot (37 in conjunction with top rods 34) within the combustion chamber that includes a sidewall (38 and side portions of 34) and a movable floor (43 or 53). The moveable floor has an opening at least as large as the cross-sectional area of the

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bottom of the burn pot and has an actuator (44 or 54) for controlling the floor's movement.

Blotsky also shows a translatable plate (28) that has openings (29) that appear substantially the same size as the lower cross sectional area of the burn pot (compare Figs. 2 and 6). Further, these openings may be cut or formed in different shapes or sizes (see col. 4, lines 30-31). As the rod portions (34) are considered part of the burner pot, the movement of the translatable plate (28) is considered to be through an internal volume of the pot (note col. 2, lines 37-38). The translatable plate is moved by actuator (33).

In regard to the recitation of at least a portion of the sidewall within the combustion chamber (e.g. claim 1), this limitation is considered present in Blotsky. As noted above, the burn pot recited in applicant's claims is considered to correspond to the body member (37) and the rods (34). Charcoal is placed beneath the rods (34) within the interior of pot (11) (considered the combustion chamber) and the translatable plate (28) rotates within the rods (34) to drop the charcoal into the lower body member (37) when desired (see col. 2, lines 37-38 and col. 3, lines 21-25). As the rods (34) extend within the interior of pot (11) (i.e. in the combustion chamber), these rods are considered "portions" of the sidewall within the combustion chamber as claimed.

In regard to at least claim 13, Blotsky expressly provides the translatable plate (28) is "contiguous" with the upper opening of the bottom wall (13) of the pot (11) (see col. 2, lines 21-22). The translatable plate (28) includes openings (29) having inner surfaces (see Figs. 1 and 2) within the translatable plate. As the plate is considered within the interior of the burn pot formed by body member (37) and rods (34), the inner surfaces of the openings (29) are considered to be "contiguous with the inside surface of the burn pot" as recited.

In regard to at least claims 12, 20, and 21, these claims do not specify the structure of the actuator. As noted above, both the moveable floor (43 or 44) and the translatable plate (28) of Blotsky have actuator structures that are individually controllable. Thus, these actuators are capable of being operated substantially simultaneously with one another. Further, in operating the actuators in unison these actuators would properly be considered an actuator for moving both the floor and plate.

In regard to at least claims 23-28, Blotsky is considered to show all the steps of these claims. In particular, Blotsky shows combusting fuel in the form of charcoal briquettes that lie within combustion chamber/bowl (11) to thereby form what is considered a column of ash (see at least col. 3, lines 7-15). When it is desired to remove the collected ash, translatable plate (28) is manipulated such that ash is caused to drop down through openings (29) and contacts screen (41). This screen serves to separate more completely burned ash from less burned coals (see col. 3, lines 26-31). The ash is then removed through bottom (42) by operation of moveable floor (either floor 43, Fig. 5 or the variation of floor 53, Fig. 6). This operation in Blotsky is considered anticipated the moving a translatable plate and removing a ash column as recited in applicant's claims.

In regard to at least claim 24, the rotational motion of bottom member (53 in the embodiment of Fig. 6) includes the same pivoting motion described by applicant to constitute cutting. Further, as noted above, fuel is added to the top of the burn pot and the resulting ash is emptied from the bottom when desired (see col. 1, lines 23-34).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. **Claims 4, 18, 19, and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,126,881 to Blotsky ("Blotsky") in view of U.S. Patent No. 3,209,743 to Stewart et al. ("Stewart").

Blotsky discloses substantially all the limitations of claims 4, 18, 19, and 22 (note discussion of the teachings of this reference above), except that the floor includes a grill portion and possibly for an igniter in fluid communication with the burn pot.

Stewart teaches a stove/furnace in the same field of endeavor as both applicant's invention and Blotsky. In Stewart, a burn pot (23) is included that is similar to that shown in Blotsky. This burn pot (23) includes a lower floor that includes openings (32) that are

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considered to form a grill structure. These openings allow for air to enter the burn pot to promote burning of materials therein (see col. 3, lines 41-46). Further, as shown in Figure 4, when combustible materials are included in the burn pot, an igniter (the illustrated match) is in fluid communication with the burn pot (see col. 4, lines 13-17).

Therefore, in regard to claims 4, 18, 19, and 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burn pot of Blotsky to incorporate the lower holes and igniter of Stewart in order to provide for ignition of combustible materials within the pot and for sustaining the combustion with a supply of air (see Stewart, col. 3, lines 41-46 and col. 4, lines 13-17).

7. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,126,881 to Blotsky ("Blotsky") in view of U.S. Patent No. 5,582,117 to Mendive et al. ("Mendive").

Blotsky discloses substantially all the limitations of claim 5 (note the discussion of the teachings of this reference above) except for openings in the sidewall of the burner pot. As noted above, the examiner has considered rods (34) to form portions of the sidewall of the burn pot. While the rods (34) are spaced such that gaps are formed between the rods, these gaps are possibly regarded as spaces between the sidewalls and not as "openings in the sidewall" as recited.

Mendive teaches a burn pot in the same field of endeavor as applicant's invention and Blotsky. In Mendive, the burn pot (10) is similar to that of Blotsky in that it includes a lower ash dumping floor and also includes a sidewall with air openings (28) in the sidewall. These air

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openings (28) provide for air flow around combustible material within the burn pot (see col. 3, lines 37-41).

Therefore, in regard to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burn pot of Blotsky to incorporate side wall openings as taught in Mendive for the desirable purpose of promoting air flow for combustion within the burn pot (see Mendive, col. 3, lines 37-41).

***Allowable Subject Matter***

8. Claim 29 is allowed. This claim is a rewriting of claim 10, which was dependent upon claim 9, in turn dependent upon claim 1. Claim 10 was previously indicated to be allowable if rewritten to include all the limitations of the base claim and any intervening claims. Accordingly, claim 29 is allowable.

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 10 is dependent upon claim 9, which is in turn dependent upon claim 1. Claim 10 includes all the limitations of claim 29 with the additional limitation (as appearing in amended claim 1) to recite the further limitation that the sidewall has at least a portion within the combustion chamber. Claim 10, when considered to include all the limitations of claim 9 and claim 1, is of a scope that is slightly different than claim 29. Accordingly, claim 10 would be allowed, if rewritten, as noted above, to incorporate the limitations of claim 9 and claim 1.



*Response to Arguments*

9. Applicant's arguments filed 8/25/2006 have been fully considered but they are not persuasive.

Applicant has again argued that Blotsky does not show a burn pot within the combustion chamber and has amended claim 1 to recite that "at least a portion of the sidewall within the combustion chamber." As previously noted and again noted above, as the rods (34) are considered to form a portion of the burn pot of Blotsky, their presence within the interior of pot (11, i.e. the combustion chamber) are considered to meet applicant's limitations. The examiner further notes that applicant terms the interpretation of the rods (34) as being part of a "new interpretation" of the Blotsky reference (see response, p. 8). However, the examiner notes that this interpretation of the reference has been maintained throughout the prosecution of this application (note page 3, item 6 of the Office action mailed 10/19/2005 and page 3, item 5 of the Office action mailed 5/16/2006). Accordingly, this interpretation is not "new" as alleged by applicant.

Further, regarding this issues, as was previously asserted, the examiner notes that these rods (34) form a support for sleeve (20), which extends down into the body (37), and plate (28) that is mounted for rotation within rods (34). In reading applicant's burn pot on these elements in Blotsky, the result is that the at least rods (34) lie within combustion chamber/bowl (11) (see Fig. 1). Accordingly, applicant's recitation of the burn pot and its orientation with respect to the combustion chamber are not considered to read over Blotsky. As applicant's claim 1 does not distinguish over Blotsky, applicant's arguments that claims 2-3, 6-9, and 11-12 are allowable is not persuasive.

Applicant has again argued that the screen (41) of Blotsky cannot correspond to the translatable plate of applicant's claims. However, the examiner has considered that the operation of translatable plate (28) and the finer ash sorting operation of the screen correspond to applicant's relevant claim recitations and not simply the screen itself. Further, as the burn pot is considered to include both body member (37) and rods (34), the movement/rotation of the plate (28) "within the rods 34" (see Blotsky, col. 2, line 38) provides that the translatable plate (28) is within the burn pot as recited.

In regard to claims 23-28, applicant has again argued that Blotsky does not show a translatable plate and moveable floor. However, the examiner notes that plate (28) and moveable floor (either 43 or 53) meet these limitations. Applicant makes no comments concerning the clear presence of the floor (either 43 or 53) which functions in the identical manner as applicant's recited "moveable plate that includes a floor" in allowing ash to be removed from the burn pot (see Blotsky, col. 3, lines 26-52). Accordingly, applicant's arguments are not persuasive.

Applicant's arguments as to the patentability of claims 4, 5, 18, 19, and 22, appear, at least in part, to relate substantially to those that were asserted to apply to claims 1-3, 6-9, 11-17, and 20-28. For the reasons, noted above those elements asserted by applicant not to be present, have been identified in the prior art by the examiner. Regarding applicant's assertion that combining Stewart with Blotsky would destroy one or both of these references, the examiner does not agree. Stewart has been cited to show that the lower wall of a burn pot may be formed as a grill in order to allow for air to enter the burn pot to promote burning of materials therein (see col. 3, lines 41-46) and to provide an igniter to in fluid communication with the burn pot in

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order to provide for ignition of combustible materials within the burn pot (see col. 4, lines 13-17). Neither of these teachings suggest destroying either Stewart or Blotsky as alleged by applicant.

Accordingly, applicant's claims 1-9 and 11-28 are not considered to patentably distinguish over the prior art of record.

### *Conclusion*

10. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc  
November 8, 2006



JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749